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STATE FOR EEB/IFD/OIA DAVID J. AHN AND THOMAS J. WALSH

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SUBJECT: NIGERIA: 2010 INVESTMENT CLIMATE STATEMENT

REF: 10 STATE 124006

¶1. Nigeria is Africa's most populous nation with an estimated population of over 150 million. It offers investors a low-cost labor pool, abundant natural resources, and potentially the largest domestic market in sub-Saharan Africa. Despite these advantages, much of that market potential is unrealized. Impediments to investment include inadequate infrastructure, corruption, an inefficient property registration system, an inconsistent regulatory environment, restrictive trade policies, and slow and ineffective courts and dispute resolution mechanisms.

¶2. Potential investors will need to understand the Nigerian business environment and engage in problem-solving with local staff, Nigerian partners, and government officials. There were at least three prominent cases in 2009 where the judicial system or law enforcement agencies were manipulated by local companies or government officials in order to exert undue pressure on U.S. companies and individuals for commercial or personal advantage. In all three cases, arrest warrants were issued and senior officials of the U.S. companies were detained with the understanding that the cases would be dropped if certain conditions were met.

¶3. Potential investors will also need to cope with poorly maintained power, road, and port infrastructure, and arbitrary policy changes, such as the reversal of privatization efforts in the power and downstream oil and gas sectors. Security is of special concern due to high rates of violent crime. Kidnapping for ransom has expanded beyond the Niger Delta where it originated to roughly half of Nigeria's states. Attacks on oil installations and the associated kidnappings of oil workers in the oil-rich Niger Delta region have significantly declined since the implementation of a government amnesty, but tensions remain because promises made for the post-amnesty period have not yet been implemented. Inadequate law enforcement compounds the country's high crime rate, and sporadic outbreaks of communal violence due to ethnic and religious conflicts continue.

¶4. Military rule ended with the inauguration of a civilian administration in May 1999. Nigeria conducted its last general election in April 2007, resulting in a civilian-to-civilian hand-over of power from former President Olusegun Obasanjo to President Umar Musa Yar'Adua. However, the elections were characterized by significant irregularities and many of the results were challenged in electoral tribunals and courts. The presidential election outcome was challenged as well, with the Supreme Court in December 2008 upholding President Yar'Adua's election. The courts overturned the announced results in six of the 36 governors' races, are still responding to appeals in five

additional cases, and forced re-runs in others.

¶5. The Nigerian government (GON) embarked on a medium-term economic reform program in late 2003 called the National Economic Empowerment and Development Strategy (NEEDS) for 2003-2007. NEEDS focused on privatization, good governance, macroeconomic stability, anti-corruption, and public service reforms. NEEDS has been modified to incorporate President Yar'Adua's "Seven Point Agenda," which focuses on power and energy, food security and agriculture, wealth creation and employment, mass transportation, land reform, security, and education system. An economic reform document called "Vision 20:2020" has been presented to the Federal Executive Council (the Cabinet) and is expected to be unveiled soon to the public. Vision 20:2020 programs aim to make Nigeria one of the top twenty economies in the world by the year 2020.

¶6. The GON also plans to reform how oil and gas business is conducted in Nigeria. In a bid to achieve this, the GON has introduced the Petroleum Industry Bill (PIB) that would change existing contracts and increase the GON's share of oil and gas revenues from mandated joint ventures. Stakeholders in the sector, including oil and gas production and service companies, have been advocating changes in the fiscal and non-fiscal terms of the PIB to make it more attractive to private sector investment. Both houses of the National Assembly have passed the PIB, which is expected to be submitted to the National Assembly for a final reading in early

¶2010.

¶7. Freedom of expression and of the press is broadly observed, although most publications practice self-censorship regarding sensitive issues. Human rights violations have been reduced from the time of military rule, but the country's overall human rights record remains poor. Controls over foreign investment have been loosened, and military government decrees inhibiting competition or conferring monopoly powers on public enterprises have been repealed or amended. The policymakers' protectionist bent remains strong despite these actions. Trade policy is inconsistent and the GON prohibits the importation of many goods, ostensibly to foster domestic production. In a bid to further support domestic production, the GON has introduced the Local Content Bill (LCB) that would require oil and gas production and service companies to use local resources for the delivery of services that are currently sourced from outside the country. Concerns about the LCB include its restrictive trade practices in violation of WTO agreements as well as transfer of technology requirements that would violate a company's intellectual property rights. Both houses of the National Assembly have passed the LCB, which is expected to be submitted to the National Assembly for a final reading in early
¶2010.

Nigeria's Selected Indices and Rankings

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¶8. The following table indicates Nigeria's ranking according to various metrics of transparency and good governance in 2009:

Measure   Index/Ranking

Transparency International Corruption Index - 130

Heritage Economic Freedom Index - 117 (World); 19 (Region)

World Bank Doing Business Index - 125

MCC Govt. Effectiveness - 35%

MCC Rule of Law - 22%

MCC Control of Corruption - 29%

MCC Fiscal Policy - 84%

MCC Trade Policy - 29%

MCC Regulatory Quality - 42%

MCC Business Start-up - 43%

MCC Land Rights Access - 11%

MCC Natural Resources Management - 23%

Openness to Foreign Investment

¶9. The GON continues to solicit foreign investment and has implemented various reforms to attract it.

¶10. Legal Framework: With a few exceptions, the Nigerian Investment Promotion Commission (NIPC) Decree of 1995 allows 100-percent foreign ownership of firms outside the petroleum sector, where investment is limited to existing joint ventures or production-sharing agreements. Industries considered crucial to

national security, such as firearms, ammunition, and military and paramilitary apparel, are reserved for domestic investors. Foreign investors must register with the NIPC after incorporation under the Companies and Allied Matters Decree of 1990. The decree prohibits the nationalization or expropriation of foreign enterprises except in cases of national interest.

¶11. Nigerian laws apply equally to domestic and foreign investors. These include the Central Bank of Nigeria Act of 2007, the Money Laundering Act of 2003, the Securities and Exchange Act of 1999, the Foreign Exchange Act of 1995, the Banking and Other Financial Institutions Act of 1991, and the National Office of Technology Acquisition and Promotion Act of 1979.

¶12. Privatization: The Privatization and Commercialization Act of 1999 established the National Council on Privatization, the policymaking body overseeing the privatization of state-owned enterprises (SOEs), and the Bureau of Public Enterprises (BPE), to implement the program. BPE has focuses on the privatization of key sectors, including telecommunications and power, and calls for core investors to acquire controlling shares in formerly state-owned enterprises. The GON repealed or amended decrees that inhibited competition or conferred monopoly powers on parastatal firms. From 1999 to date, BPE raised over $4 billion by privatizing and concessioning more than 140 enterprises, including cement manufacturing firms, banks, hotels, a petrochemical plant, aviation cargo handling companies, and vehicle assembly plants. No substantive SOE has been privatized Since President Yar'Adua's inauguration in 2007. The Infrastructure Concession Regulatory Commission (ICRC) was inaugurated in 2008 with the goal of identifying greenfield infrastructures for concessioning. The Lagos-Ibadan Expressway, a major highway in the southwestern part of the country, was concessioned to Bi-Courtney Highway Services under a Design-Build-Operate-Transfer scheme for 25 years. The GON

also plans to use a Public-Private-Partnership Framework for future infrastructure provision.

¶13. The passage of the Power Sector Reform Bill in 2005 created the Nigerian Electricity Regulatory Commission (NERC), a power regulator with responsibility for tariff regulation and economic and technical regulation of the electricity supply industry. The NERC has issued twenty nine licenses to independent power producers in the electricity industry since its inception. Three IPP plants were operational by the end of 2009. Major hurdles facing the IPPs are the failure to fully implement the Electric Power Sector Reform Act of 2005 and the insufficient supply of natural gas to power the plants.

¶14. The expected privatization of the Power Holding Company of Nigeria (PHCN) through the Electric Power Sector Reform Act of 2005 appears to no longer be a priority. The GON is rehabilitating existing power infrastructure and is investing in new power projects, with the aim to meet the GON's 6,000 Megawatts (MW) target by the end of 2009 and 10,000 MW target by the end of 2011. The 2009 goal was missed with only 3,600 MW generated at the end of the year. Nigeria also needs an effective transmission and distribution system since its current grid is in need of repair and upgrade.

¶15. The GON has substantially opened Nigeria's telecommunications sector. The Telecommunications Act of 2001 authorizes the Nigerian Communications Commission (NCC) to issue licenses to existing and prospective service providers. Nigeria's state-owned telecommunications operator, Nigerian Telecommunications Limited (NITEL) and five private companies, including Etisalat, which commenced operations in 2008, have licenses. Globacom won mobile, fixed, and international gateway licenses as Nigeria's second national telecommunications operator in mid-2002. According to the NCC, the estimated total number of phone lines (both mobile and fixed line) in Nigeria at the end of September 2009 was 70.3 million with a teledensity of 50.24. This is an improvement from the September 2008 figure of 57.07 million lines and a teledensity of 40.77. Licenses for the 2.3GHz spectrum, which were awarded through a competitive bidding process in May 2009, were cancelled due to alleged administrative procedures that were not adhered to by the NCC. A fresh bidding round will be initiated by the NCC and full details are expected soon. Three carriers in the 800MHz spectrum band were awarded to Visafone Communications in a competitive auction process in July 2007 that included Visafone Communications, GiCell Wireless Limited, Multilinks Telecommunication Limited, and TC Africa Telecoms Network Limited. Four licenses for a 10MHz lot in the 2GHz spectrum were also issued to Alheri Engineering Co. Limited, Celtel Nigeria Limited, Globacom Limited, and MTN Nigeria Communications Limited in March 2007.

¶16. The NCC commenced the unified licensing regime in May 2006, awarding the first batch of unified licenses to four telecommunications service providers. The unified license permits telecommunications companies to offer services across-the-board in telecommunications, including fixed line, wireless, data services, etc. This marks the end of the five-year exclusivity incentive granted the mobile telephone licensees in 2001.

¶17. Telecommunications deregulation has led to the issuance of licenses for fixed wireless networks, internet services, and VSAT (very small aperture terminal) satellite telecommunications equipment services. However, the GON's hefty fees and infrastructure deficiencies such as inadequate power supply slow the impact and implementation of these technologies.

¶18. The ICT sector should receive a boost in May 2010 when two broadband cables, from Glo and MainOne, are expected to land in Lagos. Current bandwidth in Nigeria is through the SAT-3 cable of 350 gigabits. The Glo and MainOne cables will increase the broadband capacity by 2.6 terabits for a total of almost 3.0 terabits for the entire country.

¶19. Glo-One is an initiative of Globacom Limited. MainOne will offer a 1.92 terabit facility that will provide the largest bandwidth in the region. Glo-One is expected to be commissioned in early 2010, while Main One is scheduled for commissioning in June
¶2010. Both projects will provide broadband data and internet capacity, which will increase the country's Internet density and capacity. They will likewise break NITEL's fiber-optic-cable quasi-monopoly and will reduce the cost of broadband to one-tenth of the current cost. Damage to the SAT-3 cable, Nigeria's only link to the global communications system, in July 2009 affected 70 percent of the country's bandwidth and crippled bank services and Internet access nationwide.

Conversion and Transfer Policies

¶20. The Foreign Exchange Monitoring Decree of 1995 opened Nigeria's foreign exchange market. In February 2006, in accordance with its plan to liberalize the foreign exchange market, Nigeria adopted a Wholesale Dutch Auction System (WDAS). The WDAS provides greater control of the foreign exchange market, although the Central Bank still retains its supervisory role over the market.

¶21. Foreign companies and individuals can hold non-naira-denominated accounts in domestic banks. Account holders have unlimited use of these funds, and foreign investors are allowed unfettered repatriation of capital. There is a $4,000 quarterly Personal Travel Allowance for foreign exchange and a $5,000 quarterly Business Travel Allowance per individual for naira-denominated accounts. Foreign exchange for travel is usually issued in cash by commercial banks while some authorized dealers also issue pre-paid credit cards that can be used on ATM machines worldwide. Purchase of foreign exchange for business purposes, such as importing equipment and raw materials, and for paying school fees abroad, must be routed through banks, Nigeria's only licensed foreign exchange agents. This can only be done with proper documentation, such as filling out the Form M and presenting copies of the certificate of incorporation of the company.

¶22. The NIPC guarantees investors unrestricted transfer of dividends (net a 10 percent withholding tax). Companies must provide evidence of income earned and taxes paid before receiving remittances. Money transfers usually take not more than 48 hours if the necessary documentation is provided. All transfers are required by law to be made through banks.

Expropriation and Compensation

¶23. The GON has not expropriated or nationalized foreign assets since the late 1970s.

Dispute Settlement

¶24. Investment Disputes: Nigeria's civil courts handle disputes between corporate bodies and the GON as well as between Nigerian businesses and foreign investors. The courts occasionally rule against the GON. However, the settlements in these cases are not always expeditiously paid. Nigerian law allows the enforcement of foreign judgments after proper hearings in Nigerian courts. Plaintiffs receive monetary judgments in the currency specified in their claims.

¶25. Legal System: Nigeria has a complex, three-tiered legal system composed of English common law, Islamic law, and Nigerian customary law. Most business transactions are governed by "common law" as modified by statutes to meet local demands and conditions. At the pinnacle of the judicial system is the Supreme Court, which has original and appellate jurisdiction in specific constitutional, civil, and criminal matters as prescribed by Nigeria's constitution. The Federal High Court has jurisdiction over revenue matters, admiralty law, banking, foreign exchange, other currency and monetary or fiscal matters, and lawsuits to which the federal government or any of its agencies are party. The Nigerian court system has too few court facilities, lacks computerized document-processing systems, and poorly remunerates judges and other court officials, all of which encourages corruption and undermines enforcement. Debtors and creditors rarely have recourse to Nigeria's pre-independence bankruptcy law. In the Nigerian business culture, businessmen generally do not seek bankruptcy protection. Claims often go unpaid, even in cases where creditors obtain a judgment against defendants.

¶26. The public increasingly resorts to the court system and is more willing to litigate and seek redress. However, use of the courts does not automatically imply fair or impartial judgments. In the World Bank's publication, Doing Business 2010, which surveyed 183 countries, Nigeria was ranked 94 out of 183 countries on the enforcement of contracts, compared with its 2009 ranking of 92 out of 181 countries surveyed. In addition, the report revealed that contract enforcement required 39 procedures and an average of 457 days, the cost of which averaged 32 percent of the value of the contract, compared to contract enforcement in OECD countries that required 30.6 procedures, spanning an average of 462.4 days at a cost of 19.2 percent of the cost of the contract, and sub-Saharan African countries that required 39.2 procedures, an average of 643.9 days, and 49.3 percent of the claim.

¶27. Alternative Dispute Resolution: The Arbitration and Conciliation Act of 1988 (the Arbitration Act) provides for a unified and straightforward legal framework for the fair and efficient settlement of commercial disputes by arbitration and

conciliation. The Act established internationally competitive arbitration mechanisms, established proceeding schedules, provided for the application of the UNCITRAL (United Nations Commission on International Trade Law) arbitration rules or any other international arbitration rule acceptable to the parties, and made the Convention on the Recognition and Enforcement of Arbitral Awards (New York Convention) applicable to contract enforcement, based on reciprocity. The Act allows parties to challenge arbitrators and provides that an arbitration tribunal shall ensure that the parties are accorded equal treatment, and that each party has full opportunity to present its case.

Performance Requirements/Incentives

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¶28. Nigeria regulates investment in line with the World Trade Organization's Trade-Related Investment Measures (TRIMS) Agreement. Foreign companies operate successfully in Nigeria's service sector, including telecommunications, accounting, insurance, banking, and advertising. The Securities and Exchange Act of 1988, amended and renamed the Investment and Securities Act in 1999, forbids monopolies, insider trading, and unfair practices in securities dealings.

¶29. To meet performance requirements, foreign investors must register with the Nigerian Investment Promotion Commission, incorporate as a limited liability company (private or public) with the Corporate Affairs Commission, procure appropriate business permits, and register with the Securities and Exchange Commission (when applicable). Manufacturing companies are sometimes required to meet local content requirements. Expatriate personnel do not require work permits, but they are subject to "needs quotas" requiring them to obtain residence permits that allow salary remittances abroad. Larger quotas are allowed for professions deemed in short supply, such as deepwater oilfield divers. U.S. companies often report problems obtaining quota permits.

¶30. The GON maintains many different and overlapping incentive schemes. The Industrial Development/Income Tax Relief Act No. 22 of 1971, amended in 1988, provides incentives to pioneer industries deemed beneficial to Nigeria's economic development and to labor-intensive industries, such as apparel. Companies that receive pioneer status may benefit from a non-renewable, 100-percent tax holiday of five years (seven years if the company is located in an economically disadvantaged area). Industries that use 60 to 80 percent of local raw materials in production may benefit from a 30-percent tax concession for five years, and investments employing labor-intensive modes of production may enjoy a 15-percent tax concession for five years. Additional incentives exist for the natural gas sector, including allowances for capital investments and tax-deductible interest on loans. The GON encourages foreign investment in agriculture, mining and mineral extraction (non-oil), oil and gas, and the export sector. In practice, these incentive programs meet with varying degrees of success.

¶31. Technology Transfer Requirements: The National Office of Industrial Property Act of 1979 established the National Office of Technology Acquisition and Promotion (NOTAP) to facilitate the acquisition, development, and promotion of foreign and indigenous technologies. NOTAP registers commercial contracts and agreements dealing with the transfer of foreign technology and ensures that investors possess licenses to use trademarks and patented inventions and meet other requirements before sending remittances abroad. In cooperation with the Ministry of Finance, NOTAP administers 120-percent tax deductions for research and development expenses if carried out in Nigeria and 140-percent tax deductions for research and development using local raw materials.

¶32. NOTAP has shifted its focus from regulatory control and technology transfer to promotion and development. With the assistance of the World Intellectual Property Organization, NOTAP has established a patent information and documentation center for the dissemination of technological information to end-users. The office has a mandate to commercialize institutional research and development with industry.

¶33. Import Policies: Tariffs provide the GON its second largest source of revenue after crude oil exports. The GON issued the

2008-2012 Common External Tariff (CET) Book that harmonizes its tariffs with its West African neighbors under the Economic Community of West African States (ECOWAS) Common Economic Tariff (CET), in September 2008. The CET has five tariff bands and import duties were reduced on a number of items, such as rice, cigars, and manufactured tobacco. The five CET tariff bands are: zero duty on capital goods, machinery, and essential drugs not produced locally; five percent on imported raw materials; ten percent on intermediate goods; 20 percent on finished goods; and 35 percent on luxury goods and in certain sectors that the GON wants to protect. The fifth band proposed by the GON has been accepted by ECOWAS member countries as part of the CET, but each member country can include products it deems appropriate. The reduction in the number of tariff bands has been accompanied by an increase in the number of import taxes in recent years. The tariff policy reduces the number of banned tradable imports from 44 to 26 items, and there is a reduction in tariff on a wide range of items. Items that remain banned include: frozen poultry; pork; beef; cassava; pasta; fruit juice in retail packs; toothpicks; soaps and detergents; refined vegetable oil; beer and non-alcoholic beverages; some textiles; and plastics.

¶34. The Nigerian Customs Service (NCS) and the Nigerian Ports Authority (NPA) have exclusive jurisdiction over customs services and port operations. Nigerian law allows importers to clear goods on their own, but most importers employ clearing and forwarding agents. Many importers under-invoice shipments and engage in currency arbitrage to minimize tariffs and lower their landed costs. Others ship their goods to ports in neighboring countries, after which they are transported overland. The GON began a destination inspection regime in January 2006, which had been shelved on four occasions between 2002 and 2005. Under the destination inspection scheme, all imports are inspected upon arrival into Nigeria, rather than at the ports of origin. Guidelines for the new scheme were announced and three companies were awarded a seven-year contract to act as inspection agents at Nigeria's seaports, border posts, and airports. The companies are Cotecna, SGS, and Global Scan. The exclusive contract will expire by 2012, if NCS officials have completed training on the new scheme and on the handling of the scanning machines, which would be handed over to the NCS at the expiration of the contract.

¶35. Shippers report that efforts to modernize and professionalize the NCS and the NPA have reduced port congestion and clearance times. These efforts include an ongoing program to achieve the stated goal of 48-hour cargo clearance, particularly at Lagos' Apapa Port, which handles over 40 percent of Nigeria's trade. Nevertheless, bribery of customs and port officials is common, and smuggled goods routinely enter Nigeria's seaports and cross its land borders. Efficient functioning of concessioned container terminals has significantly reduced container ship wait times, but the final release of containers still can take four weeks or longer due to delays in NCS container-processing and clearing.

¶36. Export Incentives: Most export incentives have been abolished. However, the Nigerian Export Promotion Council continues to implement the Export Expansion Grant scheme to improve non-oil export performance. The Nigerian Export-Import Bank provides commercial bank guarantees and direct lending to facilitate export sector growth, although these practices are underused. The Nigerian Export-Import Bank's Foreign Input Facility provides normal commercial terms of three to five years (or longer) for the importation of machinery and raw materials used for generating exports. Agencies meant to promote industrial exports remain burdened by uneven management, vaguely defined policy guidelines, and corruption. Nigeria's high production costs because of inadequate infrastructure also leave Nigerian exporters at a disadvantage.

¶37. Government Procurement: The GON awards contracts under an open-tender system, advertising tenders in Nigerian newspapers and a "tenders" journal, and opening the tenders to domestic and

foreign companies. Procurement has become slightly more transparent, but corruption persists in the awarding of government contracts. Procurement for capital projects is often subject to over-invoicing, which permits improper payments to private and public sector officials. Many U.S. companies claim they are disadvantaged in obtaining GON contracts, even when they appear to have the best bids in technical and financial terms. Unsuccessful U.S. bidders sometimes allege collusion between foreign competitors and key GON officials.

¶38. The Bureau of Public Procurement, the successor agency to the Budget Monitoring and Price Intelligence Unit (BMPIU) after the enactment of the public procurement legislation in May 2007, acts as a clearinghouse for government contracts and procurement, and monitors the implementation of projects to ensure compliance with contract terms and budgetary restrictions. Procurements above N50 million (about $333,333) are subject to full "due process," as the process is called. An amendment to the public procurement legislation is being considered by the National Assembly. The proposed amendment contains provisions for decentralizing government procurement and increasing the procurement authorization limits for ministries, departments, and agencies, unlike the earlier legislation which centralized government procurement. It is expected that the public procurement legislation would also be passed at the lower tiers of government.

¶39. Visa Requirements: Investors sometimes encounter difficulties acquiring entry visas and residency permits. Foreigners must obtain entry visas from Nigerian embassies or consulates abroad, seek expatriate position authorization from the Nigerian Investment

Promotion Commission (NIPC), and request residency permits from the Nigerian Immigration Service. Investors report that this cumbersome process can take from two to 24 months and cost from $1,000 to $3,000 in facilitation fees.

Right to Private Ownership and Establishment

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¶40. In accordance with the NIPC Decree of 1995, the GON supports competitive business practices and protects private property.

Protection of Property Rights

¶41. The GON recognizes secured interests in property, such as mortgages. The recording of security instruments and their enforcement are subject to the same inefficiencies as those in the judicial system. In the World Bank's publication, Doing Business 2010, Nigeria was ranked 178 of the 183 countries surveyed for registering property, requiring 13 procedures and an average of 82 days at a cost of 20.9 percent of the property value. According to the report, property registration in OECD countries requires an average of 4.7 procedures, an average of 25 days, and a cost of 4.6 percent of property values, while in sub-Saharan African countries it requires an average of 6.8 procedures, and average of 80.7 days, and a cost of 9.9 percent of property value.

¶42. Fee simple property rights are rare. Most property consists of long-term leases with certificates of occupancy acting as title deeds. Transfers are complex and must usually go through state governor's offices. In Abuja, the Federal Capital Territory

government cancelled and began a process of reregistering all property allotments, refusing to renew those it deemed not in accordance with the city's master plan. Buildings on these

property allotments have frequently been demolished, even in the face of court injunctions. Therefore, acquiring and maintaining rights to real property is a major challenge.

¶43. Nigeria is a member of the World Intellectual Property Organization (WIPO) and a signatory to the Universal Copyright Convention, the Berne Convention and the Paris Convention (Lisbon text). The Patents and Design Decree of 1970 governs the registration of patents, and the Registry of Trademarks, Patents and Designs in the Ministry of Commerce and Industry is responsible for registering patents, trademarks, and designs. Once conferred, a patent conveys exclusive rights to make, import, sell, or use a product or apply a process. The Trademarks Act of 1965 gives trademark holders exclusive rights to use registered trademarks for a specific product or class of products. The Copyright Decree of 1988, subsequently amended in 1992 and 1994 and later codified as the Copyright Act Chapter C 28 Laws of the Federation of Nigeria 2004 is based on WIPO standards and U.S. copyright law, and makes it a crime to export, import, reproduce, exhibit, perform, or sell any work without the permission of the copyright owner. However under the Copyright Act, owners of copyrights do not register their works. Rather, they notify the Nigerian Copyright Commission (NCC). Nigeria's copyright statutes also include the National Film and Video Censors Board Act and the Nigerian Film Policy Law of ¶1993.

¶44. The Copyright Decree was amended in 1999 to incorporate trade-related aspects of intellectual property rights (TRIPS) protection for copyrights, except provisions to protect geographical indications and undisclosed business information. There is confusion among the various GON agencies regarding proposed legislation which is expected to put all intellectual property agencies under a single and uniform authority. Concomitantly, a private bill that would establish an Industrial Property Commission is being considered by the National Assembly. This private bill would amend the Patents and Design Decree to make comprehensive provisions for the registration and proprietorship of patents and designs, amend the Trademarks Act to improve existing legislation relating to the recording, publishing, and enforcement of trademarks, and provide protection for plant varieties (including biotechnology) and animal breeds. However, there are competing plans by the Ministry of Commerce and Industry and the Ministry of Justice to send similar bills to the National Assembly for consideration. This ongoing division has lasted since at least ¶2006. The GON has signed the WIPO Internet treaties but has yet to ratify them. However, the NCC claims that it is already implementing the terms of the treaties.

¶45. Patent and trademark enforcement remains weak, and judicial procedures as well as application of enforcement measures are slow and subject to corruption. Relevant Nigerian institutions suffer from poor training and limited resources. A key deficiency is inadequate appreciation of the benefits of IPR protection among regulatory officials, distributor networks, and consumers. The over-stretched and under-trained Nigerian police have little understanding of intellectual property rights. The new tariff policy released in September 2008 empowers the Nigerian Customs Service (NCS) to seize pirated works and prosecute offenders. Though the NCS has received some WIPO-sponsored and USG-sponsored training, it admits that the technical capacity of its officers needs to be enhanced for it to be able to combat piracy effectively.

¶46. Companies do not often seek trademark or patent protection, the enforcement mechanisms of which they consider ineffective. Nonetheless, recent efforts to curtail abuse have yielded some

results. The Nigerian police and the NCC in conjunction with the Economic and Financial Crimes Commission have raided compact disc replicating plants and enterprises producing and selling pirated software and videos. A number of businesses have also filed high-profile charges against IPR violators. Most raids involving copyright, patent, or trademark infringement appear to target small rather than large and well-connected pirates. Very few cases have been successfully prosecuted. Most cases are settled out of court, if at all. Those adjudicated in court are handled primarily by the Federal High Court, whose judges are generally familiar with intellectual property rights law.

Transparency of the Regulatory System

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¶47. Nigeria's legal, accounting, and regulatory systems are consistent with international norms, but enforcement is uneven. There are sometimes opportunities for public comment and input into proposed regulations. Professional organizations set standards for the provision of professional services, e.g., accounting, law, medicine, engineering, and advertising. These standards are usually consistent with international norms. No legal barriers prevent entry into this sector.

¶48. Taxation: Nigeria's tax laws generally do not impede investment, but the imposition and administration of taxes is highly uneven and lacks transparency. Tax evasion is common, and individuals and businesses often collude with relevant officials to avoid paying taxes. Nigeria has signed double taxation agreements with several countries, including the United Kingdom, France, the Philippines and Japan. The GON imposes a 7.5-percent tax rate on dividends, interest, rent, and royalties when paid to a bona-fide beneficiary under a tax treaty. Multiple taxes are a problem for businesses at state and local levels. Companies within concurrent state and local jurisdictions may be expected to pay several taxes and levies.

Efficient Capital Markets and Portfolio Investment

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¶49. The Nigerian Investment Promotion Commission Decree of 1995 liberalized Nigeria's foreign investment regime, which has facilitated access to credit instruments provided by financial institutions. Foreign investors who have incorporated their companies in Nigeria have equal access to all financial instruments. Some investors consider the capital market, specifically the Nigerian Stock Exchange (NSE), a financing option, given commercial banks' high lending rates and the short maturities of local debt instruments.

¶50. Trading on the NSE has witnessed significant declines in value since March 2008 due to a combination of factors, including the freeze on margin loans by local banks, the sale of large quantities of shares by bank debtors to pay back margin loans, and the exit of foreign portfolio investors and hedge funds due to the global economic and financial crisis. Market capitalization opened at about 7 trillion naira ($46.7 billion) at the beginning of 2009, but closed at about 5 trillion naira ($33.3 billion) on December 31, 2009. The NSE All Shares Index opened 2009 at about 31,450 points but fell to 20,827 points on December 31, 2009. The exchange operates nine branches nationwide, and the volume of shares listed continues to rise due to new companies listing their shares on the NSE. The introduction of the contributory pension system in late 2005, the GON's divestment of equity in parastatal companies, and the initial public offerings (IPOs) and issuances of additional shares by listed companies have contributed to the NSE's

growth. The NSE continues to expand its membership and investor pool. Currently, 214 equities are listed on the exchange.

¶51. Government debt instruments are available. Since the inception of the civilian government in 1999, the federal government has issued bonds of various maturities ranging from 2 to 20 years aimed at restructuring its domestic debt portfolio from short-term to medium and long-term instruments. There has been renewed interest in bonds since the decline in the equities market in March 2008. Some state governments issued bonds to finance development projects; while some domestic banks also plan to raise additional capital from the bond market. The Nigerian Securities and Exchange Commission (SEC) has issued stringent guidelines for states that wish to raise funds on capital markets, such as a

credit assessment conducted by a recognized credit rating agency. The credit rating agencies recognized by the SEC are Agusto and Co. and Global Credit Rating (GCR) of South Africa.

¶52. Banking System: Twenty-four commercial banks were operating in Nigeria as of December 2009. The Central Bank of Nigeria (CBN) recently concluded a special audit of the 24 banks to ascertain whether they have classified their loans in line with mandated prudential guidelines and are also well-capitalized. The outcome of the special audit led to the replacement of the executive management of eight banks, while two banks have been ordered to raise additional capital. CBN also provided 620 billion naira ($4.1 billion) in long-term loans to the eight banks to boost their liquidity. The remaining 14 banks were given a clean bill of health, though they were asked to make further provisions for non-performing loans granted to petroleum product importers and capital market operators. Some of the banks have published their financial results in line with the CBN's new directive of making full provision for bad loans, showing a loss position.

Competition from State-Owned Enterprises (SOEs)

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¶53. Most State-Owned Enterprises (SOEs) have been privatized in order to make them more efficient. The remaining SOEs are a major drain on government finances. The state-owned telecommunications company, NITEL, and its mobile subsidiary, MTEL, have lost considerable market share to privately owned competitors. Both NITEL and MTEL have been slated for privatization. The four state-owned petroleum refineries located in Port-Harcourt, Warri, and Kaduna operate far below their installed capacity. The Kaduna and Port-Harcourt refineries were sold to a private consortium during the Obasanjo administration, but the transaction was later reversed by President Umaru Yar'Adua. The GON's management of the refineries has been poor. There is an ongoing drive to encourage private investment in refineries and, in a bid to attract such investment, the GON says it plans to fully deregulate the downstream sector and allow market forces to determine the price of petroleum products. The GON has also abolished the $1 million non-refundable deposit requirement for investors applying to build refineries. There are also plans to attract private investment to the railway sector through public-private partnerships (PPPs).

¶54. Sovereign Wealth Fund: The GON desires to establish a Sovereign Wealth Fund (SWF). Discussions are still ongoing within the GON on the SWF's objectives and how it would be operated. SWF legislation would be required.

Corporate Social Responsibility

¶55. Both local and foreign enterprises generally follow Corporate Social Responsibility (CSR) principles as a way of identifying with the communities in which they operate and sometimes to display support for GON initiatives. Generally, firms that pursue CSR are viewed favorably.

Political Violence

¶56. Social unrest, religious and ethnic strife, and crime affect many parts of Nigeria. In the oil-rich Niger Delta region, decades of neglect, persistent poverty, and environmental damage caused by

energy projects have aggravated unrest. Sabotage and vandalism of pipelines and other installations and kidnapping of Nigerian and expatriate oil workers have been regular occurrences. President

Yar'Adua's unconditional amnesty for Niger Delta militants in 2009 induced all major militant leaders to put down their arms and join a political reconciliation process. However, the subsequent rehabilitation and reintegration process for former militants, as well as promised massive investment in infrastructure and development in the region, have failed to materialize. Many observers fear that, absent major progress on these fronts, militancy could return in 2010.

¶57. The Niger Delta Development Commission (NDDC) has a mandate to implement social and economic development projects in the Delta region, but the NDDC has been ineffective. State and local governments offer few social services and Niger Delta residents continue to seek direct payments and other assistance from oil companies. Some oil companies have implemented their own socioeconomic development programs to assist local communities, but many communities consider the company programs inadequate. In 2009, the federal government established the Ministry for the Niger Delta, to oversee Niger Delta development projects.

¶58. Violent clashes between police and militant members of Boko Haram (Western Education Is Sin) in four northern states between July 26 and 29, 2009, resulted in over 700 reported deaths and 4,000 people displaced. The violence began when followers of an extremist Islamic leader attacked a police station in retaliation for the arrest of several of the group's leaders. Violence quickly spread, and the police and military were accused of using excessive force to end it, including the alleged extrajudicial execution by police of the leader.

Corruption

¶59. Domestic and foreign observers recognize corruption as a serious obstacle to economic growth and poverty reduction. Nigeria was ranked 130 out of 180 countries in Transparency International's 2009 Corruption Perception Index (CPI), dropping nine places from its 121 ranking in the 2008 CPI. Nigeria's corruption levels remain high and its main anti-corruption institution, the Economic and Financial Crimes Commission (EFCC), has underperformed on the issue.

¶60. The Corrupt Practices and Other Related Offences Act of 2001

established an Independent Corrupt Practices and Other Related Offences Commission (ICPC) to prosecute individuals, government officials, and businesses accused of corruption. Over 19 offenses are punishable under the Act, including accepting or giving bribes, fraudulent acquisition of property, and concealment of fraud. Nigerian law stipulates that giving and receiving bribes are criminal offences and, as such, are not tax deductible. Despite the legislation, ICPC investigations have resulted in less than fifteen convictions since 2001.

¶61. The EFCC was established to prosecute individuals involved in financial crimes and other acts of economic "sabotage." It has been most successful in prosecuting low-level internet scam operators, but some high-profile convictions have taken place, such as a former governor of Bayelsa State, a former Inspector General of Police, and a former Chairman of the Board of the Nigerian Port Authority. However, many other cases languish in the courts without resolution. Concerns about the EFCC's commitment grew after its change in leadership in December 2007 and redeployment of some personnel in July 2008. In May 2007, Nigeria was admitted into the Egmont Group of Financial Intelligence Units (FIUs). The Paris-based Financial Action Task Force removed Nigeria from its list of Non-Cooperative Countries and Territories in June 2006. Nigeria is a pilot participant in the Extractive Industry Transparency Initiative (EITI), which seeks to ensure audits of Nigeria's oil accounts. Nigeria has also ratified the UN Anticorruption Convention.

Bilateral Investment Agreements

¶62. Investment Agreements: A Trade and Investment Framework Agreement (TIFA) has been signed with the United States. A bilateral investment treaty (BIT) with the U.S. is not in place, but President Yar'Adua has expressed interest in negotiating one. Nigeria has bilateral investment agreements with the United Kingdom, Germany, Belgium, South Africa, Italy, Argentina, Egypt, South Korea, China, Jamaica, Sweden, Switzerland, Turkey, Uganda, France, Taiwan, the Netherlands and Romania.

OPIC and Other Investment Insurance Programs

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¶63. The U.S. Overseas Private Investment Corporation offers all its products to U.S. investors in Nigeria.

Labor

¶64. Nigeria's skilled labor pool has declined over the past decade as vocational and university educational standards have fallen, mainly because of poor funding. The low employment capacity of Nigeria's formal sector means that over half of all Nigerians work in the informal sector and agriculture. Companies involved in formal sector businesses such as banking and insurance possess an adequately skilled workforce (often trained abroad in private institutions or at the better-funded universities). Manufacturing sector workers often require additional training and supervision, but there are too few supervisory personnel to ensure that this is done well. Labor-management relations are strained in some sectors, especially in the profitable oil and gas and public

education sectors.

¶65. The Right of Association: Nigeria's constitution guarantees the rights of free assembly and association and protects workers' rights to form or belong to trade unions. Several statutory laws nonetheless restrict the rights of workers to associate or disassociate with labor organizations. The Trade Union Amendment Act of 2005 allows non-management senior staff to join unions. The Act also gives the Trade Union Congress and the Nigeria Labor Congress, Nigeria's most influential organized labor federations, representation on Nigeria's National Labor Advisory Council (NLAC), which advises the Minister of Labor and Productivity on labor matters.

¶66. Nigeria's largest labor federation, the Nigeria Labor Congress (NLC), contains thirty-seven industrial unions, while the second largest, Trade Union Congress (TUC), includes 18. According to figures provided by the Ministry of Labor and Productivity, total union membership at the end of 2009 was approximately 7.4 million. Approximately 30 percent of the total work force is unionized in both the private and public sectors. Workers in the agricultural sector, which employs the bulk of the work force, are not organized.

¶67. Collective Bargaining: Collective bargaining occurred throughout the public sector and the organized private sector in 2007 and 2008. However, public sector employees have become increasingly concerned about the GON's failure to honor its agreements from the collective bargaining process. According to the NLC and TUC, the GON's failure to honor its agreements threatens to "devalue the enviable record of dialogue, consultation, and mutual trust that has characterized the relationship between the GON and labor unions since 1999." A bill is currently in its final stages in the National Assembly which

would allow for better tripartite representation, dialogue, and mediation during labor disputes.

¶68. Collective bargaining in the petroleum industry is relatively efficient compared to other sectors. Issues pertaining to salaries, benefits, health and safety, and working conditions tend generally to be resolved quickly through negotiations. One exception is a longstanding unresolved dispute over the industry's use of contract labor. Organized labor's efforts to address broad political issues have resulted in industrial actions, such as general strikes over fuel price increases, which continue to affect industry productivity.

¶69. Workers under collective bargaining agreements cannot participate in strikes unless their unions comply with the requirements of the law, which includes provisions for mandatory mediation and referral of disputes to the GON. The law provides the GON the option of referring matters to a labor conciliator, an arbitration panel, a board of inquiry, or the National Industrial Court (NIC). The law forbids employers from granting general wage increases to workers without prior government approval, but the law is not often enforced. Strikes occur frequently in both the private and public sectors. There were more than a dozen threatened or actual strikes carried out among unions in the aviation, education, health, judicial, government, entertainment, and transportation sectors in 2009.

¶70. The Nigerian Minister of Labor and Productivity may refer unresolved disputes to the Industrial Arbitration Panel (IAP) and the NIC. Union officials question the effectiveness and

independence of the NIC in view of its refusal to resolve disputes stemming from the GON's failure to fulfill contract provisions for public sector employees. Union leaders criticize the arbitration system's dependence on the Minister of Labor and Productivity's referrals.

¶71. Child Labor: Nigeria has ratified the International Labor Organization (ILO) convention on the elimination of the worst forms of child labor. The 1974 Labor Decree and the 1979 Constitution prohibit forced or compulsory labor and restrict the employment of children under the age of 15 to home-based agricultural or domestic work for no more than eight hours per day. The 1974 Labor Decree allows the apprenticeship of youths as of the age of 13 under specific conditions. Nigeria's poor distribution of income has forced many children into commercial activities to enhance family income. The law, which sets a general minimum age of 12 years for employment, did not protect children from exploitation in the workplace and was not effectively enforced by the government. Child labor was widespread, and the Ministry of Labor and Productivity and the National Agency for the Prohibition of Traffic in Persons (NAPTIP) estimated there were more than 15 million children involved in child labor. The federal government passed the Child Rights Act of 2003, but implementation was required by each state government. Only 21 of the 36 states passed a version of the Child Rights Act establishing laws providing protecton of children's rights as of the end of 2009. The 2005, UNICEF State of the World's Children report estimated that 39 percent of children aged five to 14 were involved in child labor (not necessarily exploitative) in Nigeria. Similarly, a 2003 study conducted by the Nigerian National Bureau of Statistics in conjunction with the ILO estimated as many as 15 million children were working in Nigeria, with as many as 40 percent of them at risk of being trafficked for forced labor.

¶72. Acceptable Conditions of Work: Nigeria's 1974 Labor Decree provides for a 40-hour work week, two to four weeks of annual leave, and overtime and holiday pay for all workers except agricultural and domestic. No law prohibits compulsory overtime. The Decree establishes general health and safety provisions, some of which are specific to young or female workers, and requires the factory division of the Ministry of Labor and Productivity to inspect factories for compliance with health and safety standards. Under-funding and limited resources undermine the agency's oversight capacity, and construction sites and other non-factory work sites are often ignored. Nigeria's labor law requires

employers to compensate injured workers and dependent survivors of workers killed in industrial accidents, but the Ministry of Labor and Productivity has been ineffective in identifying violators and has failed to implement ILO recommendations to update its inspection program and accident reporting.

¶73. The Ministry of Labor and Productivity deals specifically with child labor problems and operates an inspections department to enforce legal provisions on conditions of work and protection of workers. The Ministry of Labor and Productivity conducted over 150 child labor inspections and 50 full investigations with 408 officers in 2009. The Inspections Department employed nearly 400 inspectors for all business sectors, but there were fewer than 50 factory inspectors for the entire country. Labor inspections were mostly random, but occasionally occurred when there was suspicion of, rather than actual complaints of, illegal activity.

Foreign Trade Zones/Free Trade Zones

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¶74. The GON established the Nigerian Export Processing Zone

Authority (NEPZA) in 1992 to attract export-oriented investment. NEPZA allows duty-free import of all equipment and raw materials into its zones. Up to 25 percent of production in an export processing zone may be sold domestically upon payment of applicable duties. Investors in the zones are exempt from foreign exchange regulations and taxes and may freely repatriate capital. Only two of the five export processing zones established under NEPZA, those in Calabar and Onne, function properly. In 2001, both were converted into free trade zones, thereby freeing them from the export requirement. As a result, investment is quickly moving into Calabar, almost exclusively in industries that add value to imports. Another free trade zone, the Tinapa Free Trade Zone owned by the Cross River state government was commissioned during the first quarter of 2007, and several shops and bank branches are operating there. Oil and gas companies use the Onne free port zone as a bonded warehouse for supplies and equipment and for the export of liquefied natural gas. Recently, the GON has encouraged private sector participation and partnership with the federal government and state and local governments under the free trades zones scheme. This has resulted in the establishment of specialized zones, such as Lekki and Olokola, which are under construction.

Foreign Direct Investment

¶75. According to data from the United Nations World Investment Report of 2009, the stock of foreign direct investment (FDI) in Nigeria in 2008 was estimated at $83.07 billion, which accounted for 38.7 percent of GDP. Total FDI Inflow was $20.28 billion in 2008 and accounted for 103.1 percent of gross fixed capital formation. This FDI inflow is mostly concentrated in the oil industry. The $20.28 billion figure represents 78 percent of total FDI in West Africa and 23.1 percent of total FDI in Africa (including North Africa) and places Nigeria as the top recipient of FDI in Africa. Some FDI is channeled into telecommunications and manufacturing, but total investment in the non-oil and gas sector remains small relative to investment in the oil and gas sector.
SANDERS